

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

)	Civil No. 09cv2109 AJB(RBB)
)	
In Re SONY VAIO COMPUTER)	SUPPLEMENTAL ORDER GRANTING IN
NOTEBOOK TRACKPAD LITIGATION)	PART AND DENYING IN PART
)	PLAINTIFF RONALD FLYNN'S MOTION
)	FOR RECONSIDERATION [ECF NO.
)	63]
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On March 29, 2011, Counsel for Plaintiff Flynn filed a Motion for Reconsideration of this Court's January 24, 2011 order to show cause why Plaintiff Flynn should not be sanctioned. (Mot. Recons. Attach. #1 Mem. P. & A. 2, ECF No. 63 (citing Mins. Jan. 24, 2011, ECF No. 48).) Plaintiff asked the Court to reconsider its February 25, 2011 sanctions order, which directed Flynn to reimburse Defendant Sony Electronics, Inc. the sum of \$3,418.00 and Defendants Best Buy Co., Inc. and Best Buy Stores, L.P. the sum of \$1,584.00. (Id. at 2.) The events leading up to the imposition of sanctions on Flynn are detailed in the Court's Order Imposing Sanctions on Plaintiff Flynn for Failing to Attend Early Neutral Evaluation Conference [ECF No. 59].

1 A hearing was held on Plaintiff Flynn's Motion on May 16,
2 2011. (Mins., May 16, 2011, ECF No. 72.) John Lowther, of Doyle
3 Lowther LLP, and Amber Eck, of Zeldes & Haeggquist, LLP, appeared
4 as counsel for Plaintiff; Leo Norton, of Cooley LLP, appeared for
5 Defendant Sony Electronics. (Id.) At the conclusion of the
6 hearing, the Court denied the Motion for Reconsideration but
7 requested additional briefing from the parties. (Id.)
8 Specifically, Flynn was asked to submit a financial affidavit
9 detailing his financial condition. (Id.) The Court indicated
10 that "[t]he payer and the amount of the sanctions award, however,
11 will be addressed in a written order following any personal
12 financial declaration and related briefs." (Id.)

13 On May 23, 2011, Plaintiff Ronald Flynn's Financial
14 Disclosure Affidavit Re Reconsideration of Imposition and Amount
15 of Sanctions was filed, which the Court directed to be filed under
16 seal. (ECF Nos. 74-77.) Counsel for Flynn also filed Plaintiff
17 Ronald Flynn's Supplemental Brief in Support of Motion for
18 Reconsideration. (Pl. Ronald Flynn's Supplemental Br. Supp. Mot.
19 Recons., ECF No. 75.) In the Supplemental Brief, counsel argues,
20 "Flynn requests that the Court revoke or reduce the sanctions
21 award against him, or permit his attorneys to pay the sanctions
22 award, as he is financially unable to do so." (Id. at 1.) In the
23 earlier Motion for Reconsideration, counsel for the Plaintiffs
24 argued that sanctions should be imposed on Flynn's counsel rather
25 than on Flynn. (Mot. Recons. Attach. #1 Mem. P. & A. 6, ECF No.
26 63.)

27 Alternatively, having now developed a better
28 understanding of Mr. Flynn's business and financial
condition, the Court should allow Counsel to reimburse
Defendants Sony and Best Buy for the sanctions award.

1 As Counsel did not fully appreciate Mr. Flynn's
2 precarious financial status, and how this could impact
3 his ability to attend the ENE, Counsel takes
4 responsibility for his absence.

5 (Id.)

6 Defendant Sony, on May 27, 2011, filed its Response to
7 Plaintiff Ronald Flynn's Supplemental Brief and Financial
8 Declaration Re Sanctions [ECF No. 78]. Sony argues that Flynn
9 "has not carried his burden of proving his inability to personally
10 pay the sanctions amount." (Sony Elecs. Inc.'s Response Pl.
11 Ronald Flynn's Supplemental Br. 1, ECF No. 78.) In the
12 alternative, Sony "requests that the sanctions amount be imposed
13 jointly on plaintiff Flynn and his counsel." (Id.) Finally, the
14 Defendant concludes that Plaintiffs' counsel should be "ordered to
15 pay the balance of the sanctions amount or the entirety of the
16 [sanctions] if the Court finds that plaintiff Flynn is unable to
17 personally pay them in whole or in part." (Id. at 5.)

18 After reviewing Ronald Flynn's Financial Disclosure
19 Affidavit, the supplemental briefs submitted by his counsel and
20 Sony, the Court concludes that Flynn's personal and financial
21 circumstances present extraordinary circumstances which justify
22 relieving him of the obligation to personally pay the sanction
23 amounts previously ordered. Nevertheless, Sony correctly observes
24 that the Defendants incurred attorneys' fees and costs that were
25 the result of Flynn's failure to attend the ENE. Counsel for
26 Flynn has acknowledged not fully appreciating Mr. Flynn's personal
27 circumstances and communicating them to the Court. (Mot. Recons.
28 Attach. #1 Mem. P. & A. 6, ECF No. 63.) For these reasons, the
Court will **GRANT IN PART** Plaintiffs' motion to reconsider its
February 25, 2011 Order Imposing Sanctions on Plaintiff Ronald

1 Flynn. As outlined in the Court's prior orders, an award of
2 sanctions for Plaintiff Flynn's failure to attend the Court's
3 early neutral evaluation conference is appropriate. The sanctions
4 award is modified to impose the sanctions jointly on Flynn and his
5 counsel, Zeldes & Haeggquist, LLP and Doyle Lowther, LLP. Rather
6 than require that Flynn personally pay the sanction awards to
7 Defendants, counsel for Flynn may pay the amounts to Defendants
8 Sony Electronics and Best Buy. In all other respects, the Motion
9 for Reconsideration is **DENIED**.

10 **IT IS SO ORDERED.**

11
12 Dated: May 31, 2011


13 Ruben B. Brooks, Magistrate Judge
United States District Court

14 cc:
15 Judge Battaglia
All Parties of Record